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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,755	03/29/2004	Lawrence W. Beason	702.337	4803

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EXAMINER

BEAULIEU, YONEL

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/812,755

Applicant(s)

BEASON ET AL.

Examiner

Yonel Beaulieu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

Claims 7 – 9 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 39, 44, and 45 of copending Application No. 10/361,531. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 7 - 9 of this application conflict with claims 39, 44, and 45 of Application No. 10/361,531. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30, 34, and 35 of copending Application No. 10/361,531. Although the conflicting claims are not identical, they are not patentably distinct from each other because whether the user moves or not from the first location to the second location the intended elevation profile creation by the processor is achieved.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 10, 11, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by McCall et al. (US 6,459,990 B1).

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Regarding claims 10, 11, and 13, McCall et al. teaches a navigation apparatus (figs. 1, 3 at least) comprising an input (11) for receiving location indication (using item 1223) from a user (col. 3: 19 – 25 at least); a three-axis magnetic sensor (2) for measuring the earth magnetic field in three directions and a two-axis tilt sensor for measuring an orientation of the device in pitch and roll (col. 3: 9 – 11 and 25 – 28; col. 11: 46 – 60 at least) and a processor including memory (5; see figs. 1, 3, 5) for creating an elevation profile and calculating a heading of the device based upon the strength of the field (col. 3: 16 – 58 at least); McCall teaches using GPS technology (col. 1: 28 – 64; col. 3: 1 – 3 at least).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall et al. ('990) as applied to claim 10 above, and further in view of McMillan et al. (US 5,075,693).

As discussed above, McCall teaches all of the limitations except for the display and the altimeter.

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However, McMillan teaches, in the same field of endeavor of navigation apparatus, using a display (24) and an altimeter (26).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified McCall's teaching by including a display and an altimeter as evidenced by McMillan in order to provide for reliability and accuracy of the device.

Claims 1 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCall ('990) in view of McMillan ('693).

As discussed above, McCall teaches all of the limitations of claims 1 – 6 except for using a display (cl. 1) and an altimeter (cl. 3).

However, McMillan teaches, in the same field of endeavor of navigation apparatus, using a display (24) and an altimeter (26).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified McCall's teaching by including a display and an altimeter as evidenced by McMillan in order to provide for reliability and accuracy of the device.

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Both McCall and McMillan are somewhat silent on the idea that there is no requirement for a user of the device to move from one location to another.

However, such has not been shown to solve any stated problem in the art; overall, it appears the combination performs equally well.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yonel Beaulieu whose telephone number is (703) 305-4072. The examiner can normally be reached on M-R, from 0900-1600.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas BLACK can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Y. BEAULIEU
AU 3661


YONEL BEAULIEU
PRIMARY EXAMINER